

Conflicts Coordinator Report to the Montana Public Defender Commission
July 31, 2006

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EXHIBIT 10

1. **Overall job description:** The Conflicts Coordinator, under the direct oversight of the Montana Public Defender Commission (PDC), is responsible for assisting conflict attorneys in securing payment for legal services directly relating to the delivery of case resources. [*Standards for Counsel, III., F., 1.*]

2. **Functions of Conflicts Coordinator:**

- A. Files written financial reports monthly and as directed with the PDC. [*Standards, III., F., 2.*]
- B. If requested by the PDC, provides reports to the PDC to assist the PDC in evaluating the work of attorneys providing conflict services. [*Standards, III., F., 2.*]
- C. Handles only administrative functions unrelated to the direct provision of legal services to clients. [*Standards, III., F., 5.*]
- D. Verifies bills for services or resources for conflict cases submitted to the Conflicts Coordinator. [*Standards, III., F., 6.*]
- E. Must sign off on all expenditures requested by conflict counsel, only to ensure compliance with State disbursement procedure and promote sound fiscal practices. [*Standards, III., F., 7.*]

3. **Report to the PDC for July 2006:**

A. **Financial Report:**

- i. Number of conflict cases: unknown

\$2,000, and within two business days for tasks expected to be \$2,000 or more.

- c. To ensure timely and efficient delivery of services to the clients by having a short path to assignment of conflict attorneys and speedy authorization of needed services.
- d. To organize the system for administration and oversight of conflict cases so that it integrates with the OPD to allow for a consistent presentation of case load, resource deployment and needs analysis by the OPD.

ii. **Actions taken:**

- a. I met with Randi Hood, Larry Murphy and Harry Freebourn on Monday, July 3rd to discuss how the Conflicts Coordinator position would fit within the OPD organization and work flow scheme. Later I met with Eric Olson for the same purpose. I've talked with Jim Taylor and Mike Sherwood for the same purpose.
- b. I've collaborated with Larry Murphy and Sandra Law to work out a payment and authorization flow for conflicts cases. We modified some of the OPD forms, policies, and procedures to accommodate the separate administration of conflict cases. [See, CC Exhibits 1-7 attached]
- c. I've done some limited research to determine if there are standards for a conflict case system and how a system might be organized. This has been preliminary and I have nothing to report yet. I've also review the PDC meeting minutes for a recap of your discussions concerning conflicts.
- d. I've answered questions from counsel, secured a few authorizations for services from Jim Taylor and worked on setting up for the first billing cycle. I've also attempted to coordinate use of existing OPD resources by conflict counsel, although that hasn't been successful so far because the offices involved were not fully staffed or the resources were not available within the time frame the services were required.

higher rate is justified. *I suggest \$120.00 per hour based upon the experience required and limitation of time to attend to other matters that this kind of case imposes.*

- B. **Authorize an expense policy that parallels the preauthorization policy of the OPD.** The OPD policy on case expense authorization is based upon tasks per case. Investigation is a task and a psychological evaluation is a task. The OPD does not require preauthorization for case expenses under \$200. For expenses between \$200 and \$2,000, the Regional Deputy Public Defender's preauthorization is required. For expenses over \$2,000, OPD Central Office preauthorization from the Contracts Officer is required.

I propose that no preauthorization for case task expenses under \$200 be required. That the Conflicts Coordinator has authority to preauthorize case task expenses expected to cost between \$200 and \$2,000. That the Conflicts Coordinator be required to seek preauthorization for case task expenses expected to exceed \$2,000 from a PDC member, and that this procedure be allowed to occur by telephone and be documented by identification of the PDC member and date on the preauthorization form. That the Conflicts Coordinator have authority to discuss alternative sources for tasks and to deny, after consultation with a PDC member, preauthorization requests. These actions will promote sound fiscal practices, one of the stated duties of the Conflicts Coordinator.

- C. **Designate a Consultation Path for the Conflicts Coordinator within the PDC.** I would like a path designated so that I can get back to the conflict attorneys in a speedy manner. I've been using Jim Taylor for that purpose, but it would be useful to know where to go next if he is unavailable. This could apply to anything that comes up. An example is preauthorization of an expense expected to exceed \$2,000. Another example is to review an unusually high number of claimed hours per case after I've talked to the conflict case attorney.

**Conflicts Coordinator
Public Defender Commission:**

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Summary of appointment procedure, cost authorization, and payment for conflicts cases

1. Determination of conflict and appointment of conflict attorney. The Regional Deputy Public Defender (RDPD) is the person responsible for determining if a case assigned to the Office of the State Public Defender (OPD) under the Montana Public Defender Act is in conflict with the RDPD staff, contract counsel, existing clients or RDPD supervision of an existing matter. These conflicts are generally outlined in the OPD Standards for Counsel, III.E. When a conflict is determined to exist the RDPD office should cross reference the OPD case number, Defendant and Attorney of all cases in conflict with each other on the OPD appointment Form 1, then fax or otherwise send a copy of the appointment form to the Conflicts Coordinator. The RDPD office should then send the case information to the attorney assigned to the conflict case in the region's usual manner.

2. Cost Authorization for attorney handling a conflict case. For now, all costs must be preapproved in conflict cases through the Conflicts Coordinator. Use the preapproval form on the OPD website. Complete the form and fax it to the Conflicts Coordinator at 406.327.0771. If you have questions, call the Conflicts Coordinator at 406.880.0771. The response time for preapproval requests should be about one working day, or two, if the preapproval amount is over \$2,000

3. Payment for services and preapproved costs. See: How do I get paid? Ten Easy Steps posted on the Forms page of the OPD website. For payment for your services, send the summary Contract Attorney claim form (posted on the OPD website) with the case billing detail to the Conflicts Coordinator. The Conflicts Coordinator will review the detail and the summary, approve or deny it, retain the detail and forward the summary to the OPD for payment.

CC - Σx 1

APPOINTMENT OF STATE PUBLIC DEFENDER

Court Name: _____

I hereby appoint the Office of the State Public Defender to represent:

Defendant Name: _____

Case Number: _____

Charges: _____

Defendant is in custody in the _____ County Jail.

Defendant's Address and Phone number is: _____

Dated this _____ day of _____, 20____.

Judge's Name: _____

For Regional Office Use Only

Assigned Attorney _____ FTE _____ Contracted _____ Conflict _____

Regional Authorization _____ Date _____

Assigned OPD# _____ Entered SABHRS _____

If this is a conflict case identify, if known, cases in conflict with this one:

Defendant _____ Attorney _____ OPD# _____

Defendant _____ Attorney _____ OPD# _____

If this is a conflict case, fax (406.327.0771) or email (k.newcomer@gn-law.com) this form to the Conflicts Coordinator.

Form No: 001

Effective: 7/26/06

Office of State Public Defender

CC-EX 2

PRE-APPROVAL OF CLIENT COSTS POLICY

1. The following policy shall apply to the pre-approval of client costs in all cases involving salaried (FTE), contract and conflict attorneys. Conflict attorneys are those attorneys assigned cases identified as conflicts cases by the Regional Deputy Public Defender (RDPD).
2. Client costs, hereinafter called costs, shall be defined as all monies to be expended in the preparation, investigation and litigation of public defender cases. A task shall be defined as each individual piece of work performed by a non-attorney in the preparation, investigation and litigation of a public defender case.
3. All attorneys must have pre-approval of any cost exceeding \$200 per task in all cases. Contract and FTE attorneys must obtain pre-approval of costs from the RDPD assigning the case. In the case where the contract or FTE attorney seeks pre-approval of a cost for a task exceeding \$2000, the RDPD must contact the State Office to obtain pre-approval. Conflict attorneys must obtain pre-approval of costs exceeding \$200 per task from the Conflicts Coordinator (CC). In a case where the conflict attorney seeks pre-approval of a cost for a task exceeding \$2000, the CC must obtain pre-approval from the Public Defender Commission.
4. The pre-approval process shall commence with the completion of the Request for Pre-approval of Costs form by the attorney assigned to the case. The request shall include the attorney's name, case name and OPD#, the task and the task giver's name, the cost of the task and a brief justification of the task and cost. The form must be signed and dated by the requesting attorney and forwarded to the RDPD, or the CC in conflict cases. The RDPD or the CC, as the case may be, shall review the request and shall explore alternative, fiscally responsible options with the attorney before approving said request. The RDPD or the CC shall approve or deny the request by circling the appropriate word on the form and by then signing and dating the same. The original form should be retained by the RDPD or CC and a copy thereof forwarded to the requesting attorney. If the request exceeds \$2000, the RDPD or CC must certify that they have reviewed the request, explored alternative, fiscally responsible options with the requesting attorney and must include a recommendation to approve or deny the request. They must sign and date the form and forward the same as follows: The RDPD shall fax the request form to the State Office c/o Larry Murphy (406.496.6098); the CC shall contact the Committee member designated by the Commission. The State Office shall approve or reject the request by circling the appropriate word on the form and by then signing and dating the same. The form should be returned by fax to the RDPD who should retain the same. The RDPD should forward a copy of the finalized form to the requesting attorney. A copy should be retained by the State Office. The CC may note the date, the Commission member, their approval or denial, and the reasons therefore on the original form. The CC should retain the original form and forward a copy thereof to the requesting attorney.
5. The original pre-approval forms should be used by the RDPD and the CC to track the pre-approved costs. The originals should be attached to the claim form when they are forwarded to the State Office for final payment.

CC-EX 3

**STATE OF MONTANA
OFFICE OF THE STATE PUBLIC DEFENDER
REQUEST FOR PRE-APPROVAL OF CLIENT COSTS**

The Regional Deputy Public Defenders (RDPD) in cases assigned to either an FTE or contract attorney, and the Conflict Coordinator (CC) in cases assigned to conflict attorneys must pre-approve all costs exceeding \$200 per task in each case.

Attorney's Name

Case Name

OPD Case #

Task Provider's Name

Estimated Cost of Task

Short Justification for Task and Cost: _____

Requesting Attorney Signature

Date

The Requesting Attorney must complete and forward this form to the Regional Deputy Public Defender for approval.

If the case is a conflict matter, please forward this form directly to:
Kerry Newcomer, Conflicts Coordinator
k.newcomer@gn-law.com 406-327-0771 (Fax)

RDPD or CC

[Approve / Deny]

Date

I certify that I have reviewed the request which exceeds \$2000; have explored alternative, financially responsible options with the requesting authority, and recommend that the request be
[Approved / Denied]

RDPD or CC

Date

**For Central Office or Commission Use Only
Requests Exceeding \$2000**

Contract Manager

[Approve / Deny]

Date

Commission Committee [Approve / Deny]

Date

Form No: 003

Effective: 7/1/06

Office of State Public Defender

CC-EX 4

STATE OF MONTANA
OFFICE OF THE STATE PUBLIC DEFENDER
HOW DO I GET PAID? TEN EASY STEPS

1. If you are presently working within the existing Public Defender system, and will be invoicing for any services that crossover from June 2006 to July 2006, you will need to make sure that all work prior to July 1st be submitted the same as you have in the past. We will pay for services and costs incurred after June 30, 2006.
2. You must be set up in the state vendor system. If you have provided services to the State of Montana in the past then you will already have a unique vendor number. We have access to that number as well, but if you include that with your invoicing it reduces the likelihood of errors in processing your warrant. If you are unsure, please call Traci @ 406-496-6382 and she can provide you your number. If you are new to the system, she will provide you with a W-9. Fax that back to the attention of Accounting @ 406-496-6098, and we will set you up.
3. The State Public Defender's office is broken into Eleven Regions, and one Central Office. While payment will be issued out of the Central Office in Butte, initial service requests, pre-approvals and invoice review will be handled at either the regional level by each Regional Deputy, or, if the matter is a conflict case, by the Conflict Coordinator. Go to <http://www.publicdefender.mt.gov/map.asp> to locate your regional and/or the Conflict Coordinator's information.
4. Each Region has a Regional Deputy Attorney. Each Office has a Managing Attorney and an Office Manager. If you anticipate your costs to exceed \$200, you will need pre-approval from either the Regional Deputy Attorney, or the Conflict Coordinator if the case is a conflict case.
5. Service providers (i.e. non-client related services and general operating expenses) do not need to provide a cover claim form. Please just submit your invoice directly to the applicable region for review.
6. Contract/Conflict Attorneys and other Professional Services- Provide a daily log and summarize the same on the Contracted Attorney Summary Claim Form. Always include both the client name and client numbers on the form. Submit your claim in a timely manner, directly to the Regional office in which the service was provided. If you are handling both conflict and non conflict matters, you will need to submit those separately to the RDPD and the CC respectively.
7. Always attach receipts pertaining to any additional misc. costs you claim. Mileage may be claimed @44.5 cents per mile for all travel required in excess of 15 miles from your established place of business.
8. Your invoices must be submitted no later than the 10th of the month following the month of service.
9. Your invoice will then be reviewed, hopefully approved, and submitted to the Central Office for payment. We will turn those around as expediently as possible.
10. Initially, the regional offices will not have access to the State AP and Voucher system. If a payment seems late (30 days or more), and your Regional contact has sent in your invoice, please feel free to contact the Central Office to determine if your voucher has been entered yet, and/or payment issued.

Please call Accounting @ 406-496-6089 with questions or concerns you might have.
All claim forms can be found on our website: <http://www.publicdefender.mt.gov/forms.asp>

CC EX5

STATE OF MONTANA
OFFICE OF THE STATE PUBLIC DEFENDER
CONTRACTED ATTORNEY SUMMARY CLAIM FORM

Vendor ID #

Please attach daily log for all work and/or costs on each case listed below.

Client Name	Assigned OPD Client #	Hrs Worked	Total Fees	Total Costs	Total Fees&Costs
		*			
TOTALS					

Attorney's Signature/Date of Submission

Contract Manager's Approval/Date Approved

SIGNATURES ABOVE CERTIFY THAT ALL COSTS IN EXCESS OF \$200 HAVE BEEN PREAUTHORIZED.
CONFLICT CASES: FAX TO KERRY NEWCOMER @ 406-327-0771 OR EMAIL TO K.NEWCOMER@GN-LAW.COM
ALL OTHER NON CONFLICT CASES NEED TO BE SUBMITTED DIRECTLY TO THE RDPD FOR APPROVAL.

CC Ex 6

STATE OF MONTANA
OFFICE OF THE STATE PUBLIC DEFENDER
MISCELLANEOUS CLAIM FOR SERVICES

Vendor ID #

<input type="checkbox"/>	Investigator
<input type="checkbox"/>	Expert Witness
<input type="checkbox"/>	Transcripts/Depositions
<input type="checkbox"/>	Research
<input type="checkbox"/>	Mediator
<input type="checkbox"/>	Other (Please Specify)

Please attach your notice of pre-approval and an Itemized invoice for all work and/or costs on each case listed below.

The undersigned Counsel certifies that the cases listed, expenses claimed and the times reported are true and accurate

Regional Director's or Conflict Coordinator's
Approval/Date Approved

SIGNATURES ABOVE CERTIFY THAT ALL COSTS IN EXCESS OF \$200 HAVE BEEN PREAUTHORIZED.
CONFLICT CASES: FAX TO KERRY NEWCOMER @ 406-327-0771 OR EMAIL TO K.NEWCOMER@GN-LAW.COM
ALL OTHER NON CONFLICT CASES NEED TO BE SUBMITTED DIRECTLY TO THE RDPD FOR APPROVAL.

CC 5x7